

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 1346

INTRODUCER: Senator Avila

SUBJECT: Local Regulation of Nonconforming or Unsafe Structures

DATE: March 21, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hunter	Ryon	CA	Pre-meeting
2.			EN	
3.			RC	

I. Summary:

SB 1346 provides that any local law, ordinance, or regulation may not prohibit or otherwise restrict the ability of a private property owner to obtain a building permit to demolish designated historic structures if:

- Such structure is a nonconforming structure located in a coastal high-hazard area which fails to meet Federal Emergency Management Agency (FEMA) standards for new construction,
- The structure is determined to be unsafe by the local building official, or
- The structure is ordered to be demolished by the local government.

The bill creates the “Resiliency and Safe Structures Act,” which provides that:

- “Nonconforming structure” means a structure located in a coastal high-hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency Management Agency which does not conform to the requirements for new construction issued by the National Flood Insurance Program.
- A local government may not prohibit, restrict, or prevent the demolition of any nonconforming structures, any structure determined to be unsafe by a local building official, or any structure ordered to be demolished by a local government for any reason other than public safety.
- A local government may not impose or enforce any limitation or condition on the approval of a replacement structure including a requirement for replication of the demolished structure, a limitation on the size or height of the replacement structure, or the maintenance of any of the demolished structure’s elements.
- A local government may not in any way limit the demolition of structures and buildings to which the act is applicable or limit the development of a replacement structure in a way that would divest property owners or developers of land use, zoning, or other land development rights for demolishing a structure in accordance with the bill.

The bill takes effect upon becoming a law.

II. Present Situation:

The Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code that would ensure that Florida's minimum standards were met. Local governments could choose from four separate model codes. The state's role was limited to adopting all or relevant parts of new editions of the four model codes. Local governments could amend and enforce their local codes, as they desired.¹

In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work. Hurricane Andrew easily destroyed those structures that were allegedly built according to the strongest code. The Governor eventually appointed a study commission to review the system of local codes and make recommendations for modernizing the system. The 1998 Legislature adopted the study commission's recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Building Code, and that first edition replaced all local codes on March 1, 2002.²

The Building Code is updated every three years. The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.³ The next edition of the Building Code will take effect on December 31, 2023.

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act". The purpose and intent of the act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.⁴

Local Enforcement of the Florida Building Code

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.⁵

Every local government must enforce the Building Code and issue building permits.⁶ It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or

¹ The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, available at http://www.floridabuilding.org/fbc/publications/2006_Legislature_Rpt_rev2.pdf (last visited March 18, 2023).

² *Id.*; DBPR, *Building Code Information System*, available at: <https://floridabuilding.org/c/default.aspx#> (last visited March 18, 2023).

³ *Id.*

⁴ Section 553.72(1), F.S.

⁵ Section 553.72, F.S.

⁶ Sections 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.

from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.⁷

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the Building Code. The Building Code requires certain building, electrical, plumbing, mechanical, and gas inspections.⁸ Construction work may not be done beyond a certain point until it passes an inspection.

Demolition Permits

The Florida Building Codes Act provides that a local law, ordinance, or regulation may not prohibit or otherwise restrict the ability of a private property owner to obtain a building permit to demolish his or her single-family residential structure provided that:⁹

- Such structure is located in a coastal high-hazard area, moderate flood zone, or special flood hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency Management Agency (FEMA) for the purpose of participating in the National Flood Insurance Program;
- The lowest finished floor elevation of such structure is at or below base flood elevation as established by the Building Code or a higher base flood elevation as may be required by local ordinance, whichever is higher; and
- Such permit complies with all applicable Building Code, Fire Prevention Code, and local amendments to such codes.

An application for a demolition permit for such single-family structure may only be reviewed administratively for compliance with the Building Code, Fire Prevention Code, local amendments to such codes, and any regulations applicable to a similarly situated parcel. Such applications may not be subject to any additional local land development regulations or public hearings.¹⁰

If a single-family residential structure is demolished pursuant to a demolition permit, a local government may not impose additional regulatory or building requirements on the new single-family residential structure constructed on the site of the demolished structure that would not otherwise be applicable to a similarly situated vacant parcel.¹¹

However, a local law, ordinance, or regulation may restrict demolition permits for certain designated historic structures:¹²

- Structure designated on the National Register of Historic Places;¹³

⁷ Sections 125.56(4)(a), 553.79(1), F.S.

⁸ Section 110 Seventh edition of the Florida Building Code (Building).

⁹ Section 553.79(25)(a), F.S.

¹⁰ Section 553.79(25)(b), F.S.

¹¹ Section 553.79(25)(c), F.S.

¹² Section 553.79(25)(d), F.S.

¹³ The National Register of Historic Places is the federal government's official list of historic places in the United States. The National Historic Preservation Act of 1966 authorized the register, which is administered by the National Park Service. In order to be listed on the register the owner of the property must not object. National Park Service, *What is the National Register of Historic Places*, <https://www.nps.gov/subjects/nationalregister/what-is-the-national-register.htm> (last visited Mar.

- Privately owned single-family residential structure designated historic by a local, state, or federal governmental agency on or before January 1, 2022; or
- Privately owned single-family residential structure designated historic after January 1, 2022, by a local, state, or federal governmental agency with the consent of its owner.

National Flood Insurance Program

The National Flood Insurance Program (NFIP) was created by the passage of the National Flood Insurance Act of 1968.¹⁴ The NFIP is administered by the Federal Emergency Management Agency (FEMA) and provides homeowners, business owners, and renters in flood-prone areas the ability to purchase flood insurance protection from the federal government.¹⁵ The general purpose of the NFIP is both to offer primary flood insurance to properties with significant flood risk, and to reduce flood risk through the adoption of floodplain management standards. Communities volunteer to participate in the NFIP in order to have access to federal flood insurance, and in return are required to adopt minimum floodplain management standards that are described in FEMA regulations.

Flood Insurance Rate Maps

FEMA develops, in coordination with participating communities, flood maps called Flood Insurance Rate Maps (FIRMs) that depict the community's flood risk and floodplain. While FEMA is largely responsible for the creation of the FIRM, the community itself must pass the map into its local regulations in order for the map to be effective. An area of specific focus on the FIRM is the Special Flood Hazard Area (SFHA). The SFHA is intended to distinguish the flood risk zones that have a chance of flooding during a "1 in 100 year flood" or greater frequency. This means that properties in the SFHA have a 1 percent or greater risk of flooding every year and a one-in-four change of flooding during a 30-year mortgage. In a community that participates in the NFIP, owners of properties in the mapped SFHA are required to purchase flood insurance as a condition of receiving a federally backed mortgage.¹⁶

Flood maps in coastal areas often show areas of high risk within the coastal SFHA. The coastal SFHA has three flood hazard zones: Zones VE (which are unique to coastal areas), AE and AO.¹⁷

- Zone VE, also known as a Coastal High Hazard Area, is where wave action and fast-moving water can cause extensive damage during a base flood event.
- Zone AE indicates areas that have at least a 1%-annual-chance of being flooded, but where wave heights are less than 3 feet.

13, 2023); National Park Service, *How to List a Property*, available at <https://www.nps.gov/subjects/nationalregister/how-to-list-a-property.htm> (last visited Mar. 18, 2023).

¹⁴ FEMA, *50 Years of the NFIP*, available at https://www.fema.gov/sites/default/files/2020-05/NFIP_50th_Final_8.5x11_Regional_Printable.pdf (last visited March 18, 2023).

¹⁵ Benefits.gov, *National Flood Insurance Program (NFIP)*, available at <https://www.benefits.gov/benefit/435> (last visited March 10, 2023).

¹⁶ Such lenders include federal agency lenders, such as the Department of Veterans Affairs, government-sponsored enterprises Fannie Mae, Freddie Mac, and federally regulated lending institutions, such as banks covered by the Federal Deposit Insurance Corporation (FDIC) or the Office of the Comptroller of the Currency (OCC).

¹⁷ Features of Flood Insurance Rate Maps in Coastal Areas, FEMA, available at <https://www.fema.gov/flood-maps/coastal/insurance-rate-maps> (last visited Mar. 19, 2023)

- Zone AO is used to map areas at risk of shallow flooding during a base flood, where water with average depths of 1 to 3 feet flows over sloping ground. On flood maps in coastal communities, Zone AO usually marks areas at risk of flooding from wave overtopping, where waves are expected to wash over the crest of a dune or bluff and flow down into the area beyond.

New Construction Requirements in Coastal Flood Hazard Zones

When a community is taking part of the NFIP, FEMA places requirements on any new construction built in flood hazard areas. Generally, new construction in flood-prone areas must be:¹⁸

- Designed and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- Constructed with materials resistant to flood damage;
- Constructed by methods and practices that minimize flood damages; and
- Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Specific conditions for new construction in coastal flood hazard zones include requiring all new construction to:¹⁹

- Be located landward of the reach of mean high tide;
- Be elevated on pilings and columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level;
- Be elevated on pilings and columns so that the pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and
- Have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. Such space may be used only for parking of vehicles, building access, or storage.

Permits for Property with a Historic Designation

Some local governments in Florida have adopted land development regulations that determine certain older single-family buildings to be historic. Some local governments have placed restrictions on property owners from obtaining permits for the demolition of the older single-family buildings that the local governments have deemed historic. Below are examples of such regulations:

- Requiring a special demolition permit.²⁰

¹⁸ 44 C.F.R. § 60.3(a)(3)

¹⁹ 44 C.F.R. § 60.3(e)(3)-(5)

²⁰ Sec. 54-71., Town of Palm Beach Code of Ordinances.

- Requiring new construction on the site of the demolished structure to be subject to certain architectural regulations, related to:²¹
 - The colors, pattern, and trim used in the building's façade.
 - The design of the roof.
 - The proportions and relationships between doors and windows.

III. Effect of Proposed Changes:

Florida Building Codes Act Provision

Section 1 amends s. 553.79, F.S., to provide that any local law, ordinance, or regulation may not prohibit or otherwise restrict the ability of a private property owner to obtain a building permit to demolish a designated historic structure if:

- Such structure is a nonconforming structure located in a coastal high-hazard area which fails to meet Federal Emergency Management Agency (FEMA) standards for new construction,
- The structure is determined to be unsafe by the local building official, or
- The structure is ordered to be demolished by the local government.

However, a local law, ordinance, or regulation may prohibit or otherwise restrict the demolition of such a structure if the enforcement agency or local building official determines that demolition of the structure is a threat to public safety.

Resiliency and Safe Structures Act

Section 2 creates s. 553.8991, F.S., titled the "Resiliency and Safe Structures Act" and provides the following definitions:

- "Nonconforming structure" means a structure located in a coastal high-hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency Management Agency (FEMA) which does not conform to the requirements for new construction issued by the National Flood Insurance Program.
 - The term includes any structure listed on the National Register of Historic Places or the State Inventory of Historic Places if it is located in a coastal high-hazard area.
- "Replacement structure" means a new development that occurs on a property where a nonconforming structure in a coastal high-hazard area was located or where a structure has been ordered to be demolished, has been demolished, or has been deemed unsafe by the local building official.

The bill provides that the act applies to the following structures:

- Nonconforming structures in coastal high-hazard areas which fail to meet FEMA standards for new construction.
- Any structure determined to be unsafe by a local building official.
- Any structure ordered to be demolished by a local government that has proper jurisdiction.

The bill provides that a local government may not prohibit, restrict, or prevent the demolition of any applicable structure for any reason, other than public safety.

²¹ Sec. 54-122., Town of Palm Beach Code of Ordinances.

The bill provides that a local government may not impose or enforce any limitation or condition on the approval of a replacement structure that replaces a demolished applicable structure, including a requirement for replication of the demolished structure, a limitation on the size or height of the replacement structure, or the maintenance of any of the demolished structure's elements.

Owners or developers of replacement structures are entitled to enjoy all land use, zoning, and other land development rights without regard to a local government restriction that may restrict development of a replacement structure as a result of a local government order, a designation, a code enforcement proceeding, or an ordinance.

The bill provides that the act applies prospectively and retroactively to any law adopted contrary to the bill and its intent.

The bill provides that a municipality, county, special district, or political subdivision may not adopt or apply a law, an ordinance, a rule, a regulation, a policy, a resolution, or any other act that in any way limits the demolition of structures and buildings to which the act is applicable or limits the development of a replacement structure in a way that would divest property owners or developers of land use, zoning, or other land development rights for demolishing a structure in accordance with the bill. All laws, ordinances, rules, regulations, policies, resolutions, and other acts of a municipality, county, special district, or political subdivision to the contrary are void.

The bill provides an effective date of upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill may allow more structures to be demolished and new structures to be built in their places, which would increase construction and development.

C. Government Sector Impact:

Local governments may have to expend funds to process a possible increase in demolition permits. The amount local governments will have to spend, if any, is indeterminate. However, local governments are permitted by state law to collect fees to cover the cost of their expenses to enforce the Building Code, which includes reviewing building permit applications.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 553.79 of the Florida Statutes

This bill creates section 553.8991 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.